

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN
AND FOR SUMTER COUNTY, FLORIDA

ROCKING G, INC.,

Petitioner,

vs.

CASE NO. 2010-CA-001255

SUMTER COUNTY BOARD OF
COMMISSIONERS,

Defendant.

ORDER ON PETITIONER'S PETITION FOR WRIT OF CERTIORARI

THIS CAUSE having come before the Court on the Petitioner's Petition for Writ of Certiorari, having reviewed the records of this case and all documents pertinent to the Petitioner's Petition, and being otherwise fully advised in the premises finds as follows:

1. Petitioner seeks certiorari review of the Sumter County Board of County Commissioner ("BOCC")'s decision to approve the staff recommendation of Sumter County Planning and Development to deny Petitioner's request to consider Petitioner's property as having a vested right for limerock mining under Sumter County Ordinance No. 90-12 . In order to be considered a mine with vesting rights under Ordinance No. 90-12(D3), an existing mine should have been registered with the county within 90 days of the effective date of that ordinance, which was September 19, 1990. Petitioner concedes that it did not register with the county in a timely fashion, but argues that it has been an existing mine since the early 1960s. Petitioner asserts that the BOCC ignored Petitioner's property rights, did not provide a single public policy concern to support its decision, departed from the essential requirements of the law, failed to provide procedural due process and the decision is not supported by any competent



substantial evidence. Petitioner brings this action pursuant to Sumter County Code Section 13-236(d), which provides that a party adversely affected by any decision of any officer, department, board, commission or bureau of the board of county commissioners, including the board of county commissioners, may appeal any such final action by petition for writ of certiorari for review to the Sumter County Circuit Court.

2. Certiorari review of a board's decision must be in accord with City of Deerfield Beach v. Vaillant, 419 So.2d 624, 626 (Fla. 1982). The Circuit Court must review the record from the commission decision and determine whether: (1) procedural due process has been afforded; (2) whether the essential requirements of the law have been observed; and (3) whether competent substantial evidence supports the commission's judgment. Fla. Power & Light Co. v. City of Dania, 761 So.2d 1089 (Fla. 2000).

3. The "competent substantial evidence" standard of review is tantamount to legally sufficient evidence. This standard requires the reviewing court to defer to the agency's superior technical expertise and special vantage point in such matters. The issue is not whether the agency's decision is the "best" decision or the "right" decision or even a "wise" decision, for these are technical and policy-based determinations properly within the purview of the agency. The circuit court has no training or experience-and is inherently unsuited-to sit as a roving "super agency" with plenary oversight in such matters. The sole issue before the court is whether the agency's decision is lawful. Fla. Power & Light Co. v. City of Dania, 761 So.2d 1089, 1092 (Fla. 2000).

4. In this case, Petitioner was afforded procedural due process of law as Ordinance No. 90-12(D53) specifically states that any mine that fails to register within the time period specified shall lose any vested rights or grandfathering for the operation of such mine. The

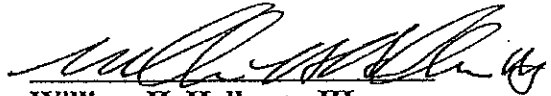
BOCC did not depart from the essential requirements of the law, and the BOCC's decision was lawful as it was based upon Sumter County Ordinance No. 90-12. Accordingly, this Court finds that Petitioner's Petition does not show a prima facie case for relief. See Fla. R. Civ. P. 1.630(d); see also Conner v. Mid-Florida Growers, Inc., 541 So.2d 1252, 1256 (Fla. 2d DCA 1989) (outlining the procedure for filing extraordinary writs in the circuit courts). As a result, this Court will not issue a Summons in Certiorari.

Based on the foregoing, it is hereby;

ORDERED AND ADJUDGED: That the Petitioner's Petition for Writ of Certiorari is **DISMISSED.**

DONE AND ORDERED in Chambers, at Bushnell, Sumter County, Florida, on this

16 of November, 2010.


William H. Hallman, III
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the following individuals by U.S. Mail/Courthouse box delivery this 16 day of November, 2010.

James E. Wade, III, Esquire
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BY: _____
Judicial Assistant